



October 30, 2002

Mr. C. Robert Heath
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel
1700 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701-2443

OR2002-6176

Dear Mr. Heath:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170768.

Austin Community College ("ACC"), which you represent, received a request for an appraisal and a management contract relating to the Riverside Golf Course and for a contract and correspondence with a named individual. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.104, 552.105, 552.107, and 552.111 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

We first note that some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the requested information includes a completed report made for ACC. ACC must release this information under section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Sections 552.105, 552.107, and 552.111 are not other law that makes information confidential for the purposes of section 552.022. *See* Open Records Decision Nos. 564 at 2 (1990) (statutory predecessor to section 552.105 protects governmental body's planning and negotiating position with regard to particular transactions), 630 at 4 (1994) (governmental body may waive attorney-client privilege under section 552.107(1)), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111). Thus, ACC may not withhold the completed report under sections 552.105, 552.107, or 552.111.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. ACC directs our attention to section 51.961 of the Education Code.¹ Section 51.961 provides in part:

(a) Information related to the location, purchase price, or sale price of real property purchased or sold by or for an institution of higher education, as defined by Section 61.003 [of the Education Code], is confidential and exempt from disclosure under Chapter 552, Government Code, until a formal award of a contract for the purchase or sale of the property is executed. Information that is confidential and exempted from disclosure under this subsection includes an appraisal, completed report, evaluation, investigation conducted for the purpose of locating or determining the purchase or sale price of the property, or any report prepared in anticipation of purchasing or selling real property.

Educ. Code § 51.961. You state that ACC seeks to withhold information, including the information that is subject to section 552.022 of the Government Code, that relates to a pending sale of real property by ACC. You have marked that information. You do not inform us that a formal award of a contract for the sale of the property has been executed. We understand that ACC is an institution of higher education under section 61.003 of the Education Code. Based on your representations, we conclude that the information that you have marked is confidential under section 51.961 of the Education Code. Furthermore, we have marked additional information that we conclude is confidential under section 51.961. The marked information is excepted from disclosure at this time under section 552.101 of the Government Code. We note, however, that ACC may not withhold the marked

¹We note that ACC did not raise section 51.961 of the Education Code within the time prescribed by section 552.301 of the Government Code. *See* Gov't Code §§ 552.301, .302. Nevertheless, we will address section 51.961, as it explicitly makes information confidential and therefore cannot be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision Nos. 630 at 2-3 (1994), 325 (1982).

information under section 552.101 in conjunction with section 51.961 of the Education Code once a formal award of a contract for sale has been executed. As we are able to make this determination, we need not address your other arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

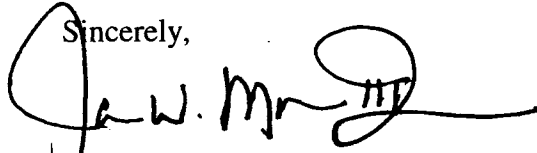
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 170768

Enc: Marked documents

c: Ms. Melissa B. Taboada
Austin American-Statesman
P.O. Box 670
Austin, Texas 78767
(w/o enclosures)